

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

IRVIN H. WHITEHOUSE & SONS COMPANY, INC.

and

Case 9--CA--27701

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS
LOCAL UNION #89, AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA, AFL--CIO

DECISION AND ORDER

By Chairman Stephens and Members Kurney and Civiatt

On August 17, 1990, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 9--RC--15627. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On September 10, 1990, the General Counsel filed a Motion for Summary Judgment. On September 13, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response on September 26, 1990.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding. In its response to the Notice to Show Cause and as an affirmative defense in its answer the Respondent contends, as it did in the underlying representation proceeding, that the Board is without jurisdiction to certify the Union because the unit employees in question are currently represented by another union, Local Union 118, International Brotherhood of Painters and Allied Trades, AFL--CIO, to which it has granted recognition, and because it has a collective-bargaining agreement with Local Union 118 covering said unit of employees that has been upheld in an arbitration award and confirmed by a U.S. district court. For these reasons, it contends that it would be legally impossible for the Respondent to bargain with the Union.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent is a Kentucky corporation engaged in the application of commercial and industrial coatings and related services from its Louisville, Kentucky facility. During the 12 months preceding the issuance of the complaint the Respondent, in the course and conduct of its business, purchased and received at its Louisville, Kentucky facility products, goods, and materials valued in excess of \$50,000 directly from points and places outside the State of Kentucky. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Certification

Following a secret mail ballot election,¹ the Union was certified on June 1, 1990, as the collective-bargaining representative of the employees in the following appropriate unit:

All shop employees employed by Irvin H. Whitehouse & Sons Company, Inc. at its Louisville, Kentucky facility, including all truck drivers, warehousemen, mechanics, maintenance employees and receiving clerks, but excluding all painters, apprentices, field utility employees, office clerical employees, sales employees and all professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On or about July 5, 1990, the Union requested the Respondent to bargain, and since on or about that same date, the Respondent has refused. We find that

¹ The mail ballots were returnable by May 22, 1990, and were opened and counted on May 24, 1990.

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this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing on and after July 5, 1990, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Irvin H. Whitehouse & Sons Company, Inc., Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Refusing to bargain with General Drivers, Warehousemen and Helpers Local Union #89, affiliated with the International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers of America, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All shop employees employed by Irvin H. Whitehouse & Sons Company, Inc. at its Louisville, Kentucky facility, including all truck drivers, warehousemen, mechanics, maintenance employees and receiving clerks, but excluding all painters, apprentices, field utility employees, office clerical employees, sales employees and all professional employees, guards and supervisors as defined in the Act.

(b) Post at its facility in Louisville, Kentucky, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with General Drivers, Warehousemen and Helpers Local Union #89, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All shop employees employed by Irvin H. Whitehouse & Sons Company, Inc. at its Louisville, Kentucky facility, including all truck drivers, warehousemen, mechanics, maintenance employees and receiving clerks, but excluding all painters, apprentices, field utility employees, office clerical employees, sales employees and all professional employees, guards and supervisors as defined in the Act.

IRVIN H. WHITEHOUSE & SONS
COMPANY, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 550 Main Street, Room 3003, Cincinnati, Ohio 45202-3271, Telephone 513--684--3663.